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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,634	12/27/2001	Thomas D. Nelson	163.1118USD1	9710
23552	7590	08/11/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			ROWAN, KURT C	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/033,634  
Filing Date: December 27, 2001  
Appellant(s): NELSON ET AL.

Katherine DeVries Smith  
For Appellant

**EXAMINER'S ANSWER**

**MAILED**  
AUG 11 2004  
GROUP 3600

This is in response to the appeal brief filed May 14, 2004.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 1-5, 8-18, 20, 23-27 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 29-33, 36-46, 48, and 50-54 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

Appellant's brief includes a statement that claims 55-58, 61-71, 75-79 stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) *Claims Appealed***

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) *Prior Art of Record***

4949501

LARKIN

8/1990

**(10) *Grounds of Rejection***

The following ground(s) of rejection are applicable to the appealed claims:

All claims are rejected under 35 U.S.C.103 as being obvious over Larkin. This rejection is set forth in a prior Office Action, mailed on July 16, 2003.

**(11) *Response to Argument***

Applicant argues that Larkin does not show three light patterns (Larkin shows all of the other elements recited). However, this is not the case since a light pattern is produced by each side and the top, which is three light patterns. It is not clear if the light patterns overlap noting Fig. 4 of Larkin as reproduced on page 6 of the brief. Larkin does not disclose if the light patterns overlap or not. Since there is no showing of criticality to the light patterns over-lapping or not and since no stated problem is solved, the non-overlapping of light patterns is deemed to me a matter of design choice to be determined through routine experimentation. The drawings of the present invention show many different light patterns. Applicant has not shown any evidence that any of the light patterns shown produces an unexpected result except that multiple light patterns is more effective than a single pattern, but the light patterns of Larkin on either

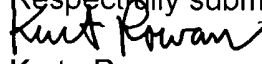
Art Unit: 3643

side of the trap are separate light patterns. As to claim 29, Larkin shows a square housing but it would have been obvious to employ a triangular shape since the function is the same and no stated problem is solved. See *In re Dailey et al.*, 149 USPQ 47. In reference to claim 55, Larkin shows two sources of light as two tubes forming a U-shape, but it would have been obvious to employ a third for multiplied effect. See *In re Harza*, 124 USPQ 378. Larkin produces a light pattern from each side wall and the top which is three light patterns. Applicant argues that Larkin has not structure to produce three non-overlapping light patterns, but it appears that the corners of Larkin would affect the light pattern on the wall. In regard to claim 29, the prior art does not need to show a triangular shape since changes in shape are obvious. No advantages are given for the triangular plate shape. Hence the shape of the plate is a matter of design choice. The motivation to modify the prior need not come from the reference, but from the level of skill in the art. One skilled in the art would for example change the shape of the trap based on the amount of material need to construct the trap since there are no disclosed functional difference between the traps. In reference to claim 55, the trap of Larking shows two parallel tubes that extend parallel to the side edges of the trap. Extending Larkin to three lights, would logically have a light parallel to each wall which results in the same structure as the claimed invention.



For the above reasons, it is believed that the rejections should be sustained.

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Art Unit: 3643

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Respectfully submitted,  
  
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Primary Examiner  
Art Unit 3643

KR  
August 9, 2004

Conferences  
PP   
DA 

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